

# SENATE, No. 1989

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED APRIL 28, 2014

**Sponsored by:**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**SYNOPSIS**

Modifies spousal or civil union partner privilege against testifying in criminal actions to prevent invoking of privilege under certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the spousal or civil union partner privilege  
2 against testifying in criminal actions, and amending P.L.1960,  
3 c.52.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. Section 17 of P.L.1960, c.52 (C.2A:84A-17) is amended to  
9 read as follows:

10 17. Privilege of accused.

11 (1) Every person has in any criminal action in which he is an  
12 accused a right not to be called as a witness and not to testify.

13 (2) The spouse or one partner in a civil union couple of the  
14 accused in a criminal action shall not testify in such action except to  
15 prove the fact of marriage or civil union unless (a) such spouse or  
16 partner consents, or (b) the accused is charged with an offense  
17 against the spouse or partner, a child of the accused or of the spouse  
18 or partner, or a child to whom the accused or the spouse or partner  
19 stands in the place of a parent, or (c) such spouse or partner is the  
20 complainant, or (d) such spouse or partner, prior to entering into  
21 marriage or a civil union with the accused, is a witness in the  
22 criminal action and then marries or joins in civil union with the  
23 accused, either after the spouse or partner, or the accused, becomes  
24 aware that the accused was being investigated in the criminal  
25 action, or after the accused was charged in that criminal action, or  
26 (e) such spouse or partner handles evidence related to the criminal  
27 action in a manner that changes the nature of the evidence or  
28 disrupts its chain of custody.

29 (3) An accused in a criminal action has no privilege to refuse  
30 when ordered by the judge, to submit his body to examination or to  
31 do any act in the presence of the judge or the trier of the fact, except  
32 to refuse to testify.

33 (cf: P.L.2006, c.103, s.90)

34  
35 2. Section 22 of P.L.1960, c.52 (C.2A:84A-22) is amended to  
36 read as follows:

37 22. **【Rule 28.】** Marital or Civil Union Partner privilege--  
38 Confidential communications.

39 No person shall disclose any communication made in confidence  
40 between such person and his or her spouse or partner in a civil  
41 union couple unless both shall consent to the disclosure or unless  
42 the communication is relevant to an issue in an action between them  
43 or in a criminal action or proceeding in which either spouse or  
44 partner in a civil union couple consents to the disclosure, or in a  
45 criminal action or proceeding coming within section 17 of

**EXPLANATION** – Matter enclosed in bold-faced brackets **【thus】** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 P.L.1960, c.52 (C.2A:84A-17), which is further enumerated under  
2 Article V of the Rules of Evidence in accordance with Rule 500 of  
3 those rules. When a spouse or partner in a civil union couple is  
4 incapacitated or deceased, consent to the disclosure may be given  
5 for such spouse or partner by the guardian, executor, or  
6 administrator. The requirement for consent shall not terminate with  
7 divorce or separation. A communication between spouses or  
8 partners in a civil union couple while living separate and apart  
9 under a divorce from bed and board shall not be a privileged  
10 communication.

11 (cf: P.L.2013, c.103, s.17)

12  
13 3. This act shall take effect immediately and, to the fullest  
14 extent consistent with constitutional restrictions, shall apply to all  
15 criminal actions regardless of the date on which the offense was  
16 committed or the action initiated.

#### 17 18 19 STATEMENT 20

21 This bill modifies the spousal or civil union partner privilege  
22 against testifying in criminal actions to prevent the invoking of such  
23 privilege by a spouse or one partner in a civil union couple under  
24 the following circumstances:

25 (1) such spouse or partner, prior to entering into marriage or a  
26 civil union with an accused, is a witness in the criminal action and  
27 then marries or joins in civil union with the accused, either after the  
28 spouse or partner, or the accused, becomes aware that the accused  
29 was being investigated in the criminal action, or after the accused  
30 was charged in that criminal action; or

31 (2) such spouse or partner handles evidence related to the  
32 criminal action in a manner that changes the nature of the evidence  
33 or disrupts its chain of custody.

34 The bill responds to the New Jersey Supreme Court ruling in  
35 State v. Mauti, 208 N.J. 519 (2012). The Court considered whether  
36 the existing spousal/partner privilege against testifying, as set forth  
37 in section 17 of P.L.1960, c.52 (C.2A:84A-17), could be pierced to  
38 force a witness, who at the time of an alleged criminal sexual  
39 assault, was the girlfriend of the accused, and who had provided  
40 testimony before a grand jury concerning (1) the alleged criminal  
41 act and (2) her handling of evidence related to that act; soon after,  
42 the girlfriend and the accused got married, and the day after the  
43 marriage, the former girlfriend, now wife of the accused, invoked  
44 spousal privilege and refused to testify in the trial of the accused.  
45 The Court determined that the invoking of the spousal privilege by  
46 the former girlfriend could not be pierced for the trial, based upon  
47 the existing statutory scope of the privilege. Although the accused  
48 had been indicted for four crimes, including first degree aggravated

1 sexual assault (under N.J.S.2C:14-2), without the benefit of  
2 testimony from the witness, the jury only convicted the accused of  
3 third degree aggravated criminal sexual contact (under N.J.S.2C:14-  
4 3).

5 In addition to modifying the spousal or civil union partner  
6 privilege with the new exceptions as outlined above, the bill intends  
7 to ensure the consistent and proper application of these privilege  
8 exceptions by amending an additional, corresponding statute  
9 concerning confidential communications between spouses (section  
10 22 of P.L.1960, c.52 (C.2A:84A-22)), updating it with references  
11 for civil union couples, as well as to indicate that the statutory  
12 source of the spousal/partner privilege set forth in section 17 of  
13 P.L.1960, c.52 (C.2A:84A-17) is further enumerated by the Court  
14 under current Article V of the Rules of Evidence in accordance with  
15 Rule 500 of those rules.